

No. 13963

---

United States  
Court of Appeals  
for the Ninth Circuit

*See vol. 2847*

CHIN CHUCK MING and CHIN CHUCK SANG,  
by Their Next Friend and Father, CHIN AH  
POY,

Appellants,

vs.

JOHN FOSTER DULLES, Secretary of State of  
the United States of America,

Appellee.

---

Transcript of Record

---

Appeal from the United States District Court for the  
District of Oregon

FILED

OCT 1 1953



No. 13963

---

United States  
Court of Appeals  
for the Ninth Circuit

---

CHIN CHUCK MING and CHIN CHUCK SANG,  
by Their Next Friend and Father, CHIN AH  
POY,

Appellants,

vs.

JOHN FOSTER DULLES, Secretary of State of  
the United States of America,

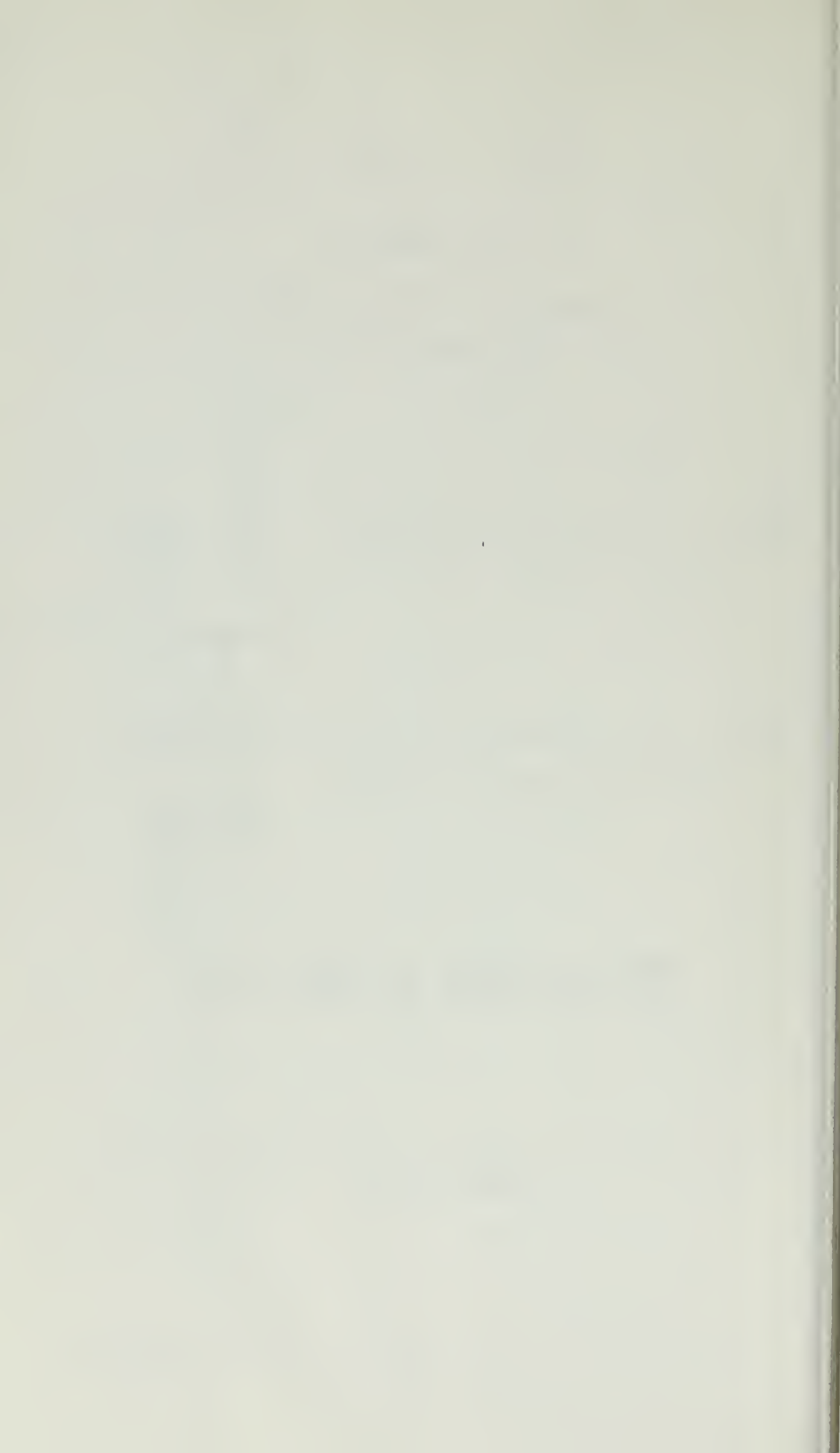
Appellee.

---

Transcript of Record

---

Appeal from the United States District Court for the  
District of Oregon



## INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer .....	7
Bond for Costs.....	16
Clerk's Certificate .....	28
Complaint .....	3
Memorandum Opinion .....	12
Minute Entry July 29, 1953—Order Granting Motion to Substitute Party Appellee.....	30
Motion to Dismiss.....	9
Names and Addresses of Attorneys of Record..	1
Notice of Appeal.....	16
Order of Dismissal.....	13
Statement of Points.....	31
Transcript of Proceedings.....	19

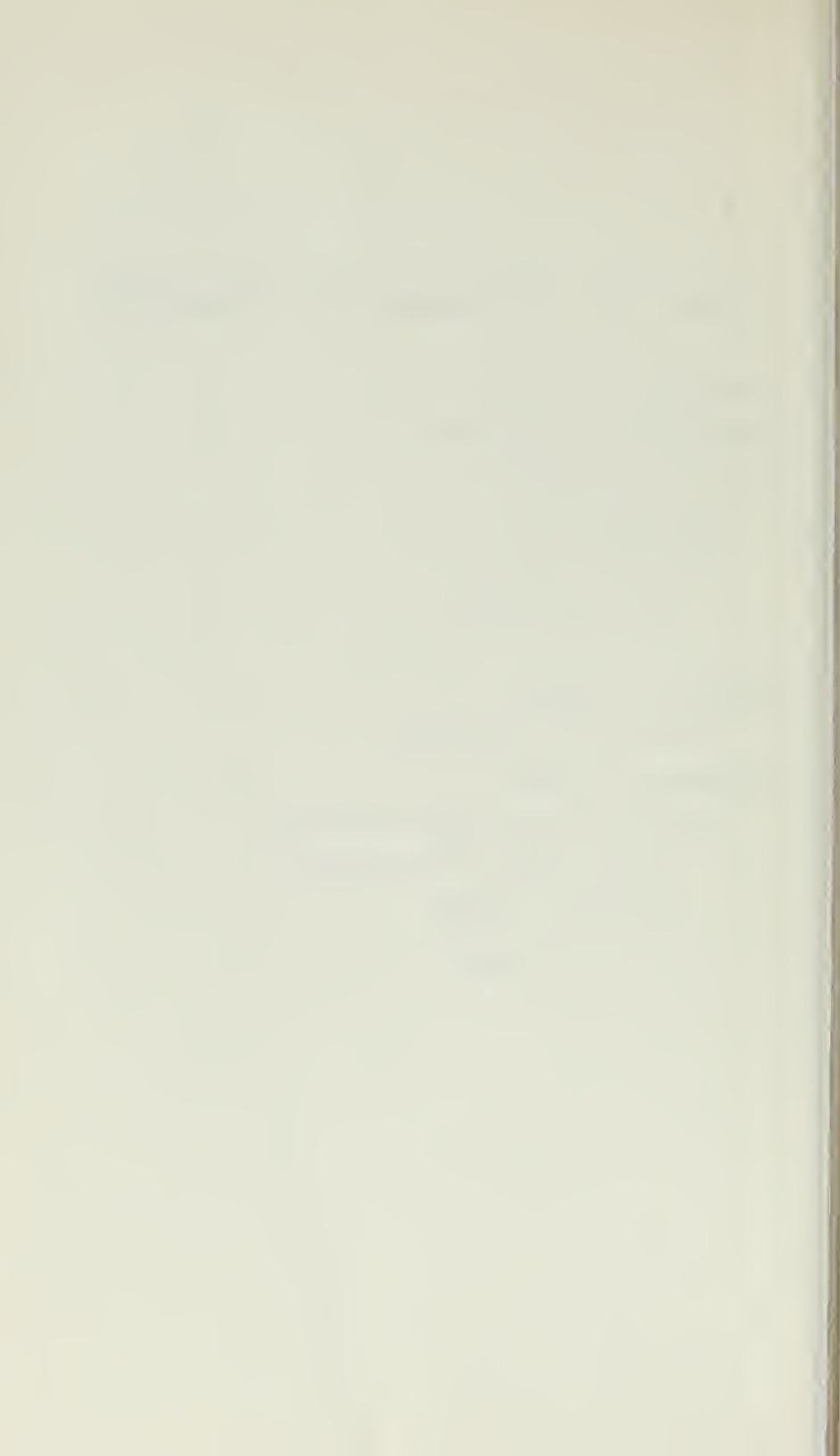


NAMES AND ADDRESSES OF ATTORNEYS

JOSEPH & POWERS,  
JAMES P. POWERS, and  
J. P. SANDERSON,  
Yeon Building,  
Portland, Oregon,  
For Appellants.

HENRY L. HESS,  
United States Attorney;

VICTOR E. HARR,  
Assistant United States Attorney,  
United States Court House,  
Portland, Oregon,  
For Appellee.





In the District Court of the United States  
for the District of Oregon

No. Civil 6763

CHIN CHUCK MING and CHIN CHUCK  
SANG, by Their Next Friend and Father,  
CHIN AH POY,

Plaintiffs,

vs.

DEAN ACHESON, Secretary of State of the  
United States of America,

Defendants.

### COMPLAINT

Comes now Chin Chuck Ming and Chin Chuck Sang by their next friend and father, Chin Ah Poy, and for cause of action against the defendant complain and allege:

#### I.

That Chin Chuck Ming and Chin Chuck Sang, the plaintiffs, are citizens of the United States since birth and bring this action through their next friend and father, Chin Ah Poy, a citizen of the United States, and a resident of Portland, Oregon.

#### II.

That the defendant, Dean Acheson, is the duly appointed, qualified and acting Secretary of State of the United States of America; that the American Consul General at Hongkong is an officer of the United States and an executive official of the De-

partment of State of the United States, acting under and by the direction of the defendant as Secretary of State.

### III.

That the jurisdiction of this action is conferred upon this Court by Section 503 of the Nationality Act of 1940, 8 U.S.C. 903.

### IV.

That plaintiff Chin Chuck Ming was born in Toong Poon village Toyshan, Kwangtung, China, on January 15, 1933, and plaintiff Chin Chuck Sang was born in the same village on April 10, 1928, and are presently residing in Hongkong.

### V.

That the plaintiffs, Chin Chuck Ming and Chin Chuck Sang, are citizens of the United States under Section 1993 of the Revised Statutes, 8 USC, 6 First Edition and Section 504 of the Nationality Act of 1940, 8 U.S.C. 904.

### VI.

That Chin Ah Poy, the father of plaintiffs, was born in China on November 26, 1900, and originally arrived in the United States at Boston, Massachusetts, July 10, 1920, when he was regularly admitted into the United States as a citizen thereof on the ground of being a foreign born son of a citizen of the United States as provided for by Section 1993 of the Revised Statutes, 8 U.S.C., 6 First Edition.

VII.

That the said Chin Ah Poy went to China in 1925, 1931, 1938 and 1947, and returned to the United States in 1928, 1933, 1940 and 1949; that the said Chin Ah Poy was married in accordance with the laws of China on February 24, 1919, to Lor Shee who died in Toong Poon village on March 30, 1944; that plaintiffs were born in lawful wedlock of said marriage.

VIII.

That the plaintiffs herein claim the city of Portland, Oregon, as their permanent residence, the place of residence of their father and within the jurisdiction of this court; that plaintiffs claim the right of entering the United States of America as nationals and as citizens of said nation.

IX.

That Chin Ah Poy caused to be filed with the American Consul General at Hongkong his affidavit-application dated September 6, 1951, prepared in accordance with the regulations, for travel documents for the said Chin Chuck Ming and Chin Chuck Sang so that they would be eligible to purchase transportation to the United States in order to apply for admission as citizens thereof at a port of entry under the immigration laws.

X.

That although the plaintiffs have been steadily available for examination by the American Consul General at Hongkong, he has not issued the re-

quested travel documents; that the failure of the said Consul General to issue the documents after a lapse of so much time is unfair, unreasonable, arbitrary and is equivalent to a denial of the plaintiffs' applications and their rights as American citizens; that the plaintiffs thereby have been stopped from coming to the United States and from applying to and presenting proof of their American citizenship to the Immigration Service at a port of entry; that since the Consul General has not denied the said applications there has been no official denial and therefore the defendant would, as could be expected, refuse to take cognizance of any appeal, as under Section 50.28 of Title 22, Code of Federal Regulations, leaving the only available remedy the present action.

#### XI.

That the applications of the plaintiffs are being held subject to investigation, consideration and determination under a new and secret procedure devised by the American Consul General at Hongkong, limited to members of the Chinese race, not within any Regulation, but of a class restriction within the term "class legislation," in violation of law.

#### XII.

That the plaintiffs are citizens of the United States as aforesaid and they claim United States nationality and citizenship and bring this action in good faith and on a substantial basis.

Wherefore, plaintiffs pray for an order and judgment of this court as follows:

1. That an order, directed to the defendant, Dean Acheson, issue to provide that the plaintiff be granted a Certificate of Identity, passport or travel document, in order that he be eligible to purchase transportation to the United States and be admitted under bond for the purpose of prosecuting his claim of citizenship in this court.

2. That a decree be entered herein adjudging the plaintiff to be a citizen or a national of the United States.

3. That the plaintiff be granted such other and further relief as may be just and equitable in the premises.

JOSEPH & POWERS,

By /s/ JAMES P. POWERS,

/s/ J. P. SANDERSON,

Attorneys for Plaintiffs.

[Endorsed]: Filed December 22, 1952.

---

[Title of District Court and Cause.]

ANSWER

Comes now Henry L. Hess, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, for and on behalf of the defendant above named and in an-

swer to the complaint on file herein, admits, denies and alleges as follows:

I.

Defendant denies the allegations of Paragraph I.

II.

Defendant admits the allegations of Paragraphs II and III.

III.

Answering Paragraphs IV, V, VI, VII, VIII, IX, X, XI and XII defendant lacks information as to the truth or falsity of the allegations therein contained and therefore denies the same and puts plaintiffs to proof thereon.

Wherefore, defendant, having fully answered plaintiffs' complaint herein, prays that the same be dismissed and that defendant recover his costs and disbursements herein incurred.

HENRY L. HESS,

United States Attorney for  
the District of Oregon;

/s/ VICTOR E. HARR,

Assistant United States  
Attorney.

[Endorsed]: Filed February 18, 1953.

[Title of District Court and Cause.]

MOTION TO DISMISS

The Attorney General of the United States, by and through Henry L. Hess, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, moves the Court for an order dismissing the above-entitled case upon the ground and for the reason that the complaint herein, on its face, shows that applications for passports have not been denied plaintiffs and therefore plaintiffs have not been denied any rights on their alleged claim of citizenship, a jurisdictional requirement under Title 8, Section 903, U.S.C.

Dated at Portland, Oregon, this 6th day of April, 1953.

HENRY L. HESS,

United States Attorney for  
the District of Oregon;

/s/ VICTOR E. HARR,

Assistant United States  
Attorney.

[Endorsed]: Filed April 6, 1953.

In the District Court of the United States  
for the District of Oregon

Civ. 6622

WOO CHIN CHEW, by His Next Friend, WOO  
YUEN PAK,

Plaintiff,

vs.

DEAN G. ACHESON, Secretary of State of the  
United States of America,

Defendant.

Civ. 6751

JOONG TUNG YEAU, by His Brother and Next  
Friend, JOONG YUEN HING,

Plaintiff,

vs.

DEAN G. ACHESON, Secretary of State of the  
United States of America,

Defendant.

Civ. 6752

LEE WING GUE, by His Father and Next Friend,  
LEE SUN YUE,

Plaintiff,

vs.

DEAN G. ACHESON, Secretary of State of the  
United States of America,

Defendant.



Civ. 6757

LEE GWAIN TOY and LEE GWAIN DOK, by  
Their Father and Next Friend, LEE BEN  
KOON,

Plaintiffs,

vs.

DEAN G. ACHESON, Secretary of State of the  
United States of America,

Defendant.

Civ. 6762

LOUIE HOY GAY, by His Father and Next  
Friend, LOUIE FOO,

Plaintiff,

vs.

DEAN G. ACHESON, Secretary of State of the  
United States of America,

Defendant.

Civ. 6763

CHIN CHUCK MING and CHIN CHUCK SANG,  
by Their Next Friend and Father, CHIN AH  
POY,

Plaintiffs,

vs.

DEAN G. ACHESON, Secretary of State of the  
United States of America,

Defendant.

## MEMORANDUM OPINION

May 25, 1953

James Alger Fee, Chief Judge:

In each of these cases, it has been represented that the petitioner is a resident of China who has never been in the United States and who claims citizenship by birth in a foreign country through his father, who is claimed to be a citizen of the United States. The history of the Chinese cases which have been administratively handled with appeal to the appellate courts of the federal system convinces the Court that the statute under which these cases were brought was not intended as a substitute for the administrative hearing by experts, which has been used for half a century. The danger of fraud in these cases has been apparent during that time, and, with the present disturbed political situation in China, which also affects the world, it is the opinion of the Court that the State Department should not be required to bring these persons into the country and release them for the purpose of trying out the question of their citizenship in the courts.

Aside from that point, however, in these cases the proceeding was originally brought against Dean G. Acheson, as Secretary of State, and in each a motion has been made to substitute John Foster Dulles. The Court is of opinion that the new Secretary of State should have an opportunity to have these questions passed upon originally by his administrative staff, and thereafter, if this statute is ap-

plicable, the actions could be filed again. The Court therefore finds that the plaintiffs have not shown that there is a substantial need for continuing the within actions against John Foster Dulles, successor to Dean G. Acheson, or that the former adopt or continue or threaten to adopt or continue the action of his predecessor. In view of the fact that substitution cannot be made, the Court dismisses each of these causes.

The last case differs from the others in that no motion for substitution has been filed. The same considerations apply. But, under the circumstances, it is dismissed for failure to prosecute.

[Endorsed]: Filed June 1, 1953.

---

In the United States District Court  
for the District of Oregon

Civil No. 6763

CHIN CHUCK MING and CHIN CHUCK SANG,  
by Their Next Friend and Father, CHIN AH  
POY,

Plaintiffs,

vs.

DEAN ACHESON, Secretary of State of the  
United States of America,

Defendant.

ORDER

This matter came on to be heard before the undersigned Judge on Monday, April 20, 1953, upon mo-

tion of defendant by and through Henry L. Hess, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, for an order dismissing the above-entitled case upon the ground and for the reason that the complaint on its face shows that application for passport had not been denied plaintiffs and therefore plaintiffs have not been denied any rights on their alleged claim of citizenship, a jurisdictional requirement under Title 8, Section 903, U.S.C.A.; further, it having been stated into the record by plaintiffs' counsel that the plaintiffs have never resided in the United States; and it further appearing that plaintiffs have not filed a motion in the within cause for an order to substitute John Foster Dulles, Secretary of State of the United States of America, as party defendant in place of Dean Acheson, formerly the Secretary of State of the United States of America; and the Court having considered the record herein, statements of counsel, James P. Powers, of attorneys for plaintiffs, and Victor E. Harr, Assistant United States Attorney, of attorneys for defendant, and being of the opinion that Congress, in enacting Section 903, Title 8, U.S.C.A., never intended said section to be applicable to the claims of the nature herein asserted by plaintiffs, and being advised in the premises, it is

Ordered that defendant's motion be and the same is hereby allowed, and

It Is Further Ordered that the within cause be and the same is hereby dismissed for the following reasons :

1. That the application as made to the American Consulate Officer of the Department of State by plaintiffs to permit plaintiffs' entry into the United States has never been denied plaintiffs;

2. That plaintiffs have failed to file a motion to accomplish substitution of John Foster Dulles, Secretary of State of the United States of America, as party defendant in place of Dean Acheson, in accordance with Rule 25(d), Federal Rules of Civil Procedure;

3. That plaintiffs have never resided in the United States; and

4. That the Congress in enacting Section 903, Title 8, U.S.C.A., never intended that individuals asserting claims such as that asserted by plaintiffs herein, who have lived their lives as Chinese and who have never been in the United States, have the status and right to avail themselves of Section 903, Title 8, U.S.C.A.

Made and entered this 18th day of June, 1953.

/s/ JAMES ALGER FEE,  
District Judge.

[Endorsed]: Filed June 18, 1953.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that Chin Chuck Ming and Chin Chuck Sang, by their next friend and father, Chin Ah Poy, plaintiffs above named, hereby, appeal to the United States Court of Appeals for the Ninth Circuit from the order dismissing the above-entitled case, entered in this action on June 18, 1953.

JOSEPH & POWERS,

By /s/ JAMES P. POWERS,

Attorneys for Plaintiffs.

[Endorsed]: Filed July 1, 1953.

---

[Title of District Court and Cause.]

### BOND FOR COSTS

Know All Men by These Presents, That we, Chin Chuck Ming and Chin Chuck Sang, by their next friend and father, Chin Ah Poy, Plaintiffs, as Principal, and the American Surety Company of New York, as Surety, are held and firmly bound unto Dean Acheson, Secretary of State of the United States of America, Defendant, his executors, administrators, or assigns, in the sum of Two Hundred Fifty & No/100 (\$250.00) dollars, lawful money of the United States of America, to be paid unto the said Dean Acheson, Secretary of State of

the United States of America, his executors, administrators, or assigns, to which payment well and truly to be made, we do bind and oblige our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 18th day of June, A.D. 1953.

Whereas, the above-named Chin Ah Poy heretofore is a citizen of the State of Oregon commenced an action in the United States District Court, in and for the District of Oregon, against the said Dean Acheson, Secretary of State of the United States of America.

Now, Therefore, the Condition of This Obligation is such that if the above-named Chin Chuck Ming and Chin Chuck Sang, by their next friend and father, Chin Ah Poy, in the said action shall pay on demand, all costs that may be adjudged, or awarded against them as aforesaid in said action; then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

/s/ CHIN AH POY.

[Seal]                    AMERICAN SURETY COM-  
                                  PANY OF NEW YORK.

By /s/ JEAN D. SAUNDERS,  
                                  Res. Vice President.

Attest:

/s/ JEANNE SIEBEN,  
                                  Res. Asst. Secretary.

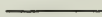
Sealed and delivered in the presence of:

.....

Countersigned:

E. MURRAY,  
Resident Agent for Oregon.

[Endorsed]: Filed July 1, 1953.



United States District Court, District of Oregon

No. Civil 6751

(Also: Civil Nos. 6763, 6757, 6761 and 6762)

JOONG TUNG YEAU,

Plaintiff,

vs.

DEAN ACHESON, etc.,

Defendant.

April 20, 1953

Before: Honorable James Alger Fee,  
Chief Judge.

Appearances:

RODNEY W. BANKS,  
Of Counsel for Plaintiffs in Civil Nos.  
6751, 6757 and 6762.

JAMES P. POWERS,  
Of Counsel for Plaintiff in Civil No. 6753.



No appearance was made in Civil No. 6761.

VICTOR E. HARR,

Assistant United States Attorney,  
Of Counsel for Defendant.

### TRANSCRIPT OF PROCEEDINGS

Mr. Harr: As your Honor perhaps knows, these cases may be all considered together. They arise because of Title 8, Section 903 of the Code, that a person born of parents either one or the other residing in this country, their offspring born in a foreign nation may appear before the American Consulate and make application for a passport to this country by virtue of derivative citizenship. That has been the procedure. There have been a number of cases filed up and down the Coast, and quite a number of them here, where an alleged Chinese father, a citizen of this country, has returned to China, has married and they have had offspring.

The Court: They always have boys, I understand.

Mr. Harr: That is generally the rule, your Honor. And they then make application to the American Consulate, at the nearest office, and ask for a travel document. That is the basis of these five cases now before your Honor.

I would like to preface my statement, your Honor, with this comment: That as to each of these five cases we have not received the Department of State file. The motion is predicated entirely upon the complaint as filed by the plaintiff.

Section 903 provides that if any person who claims a right or privilege as a national of the United States is denied such right and privilege he may file suit in the Federal District Court applying for citizenship, for an order of citizenship. The complaints in each of these five cases state that such applications were made to the Secretary of State Consul either at Canton, China, or Hongkong. And all the complaints further state that there was no rejection of the [2\*] travel document, but that the Consulate officer, for reasons of his own, was dilatory and did not act upon the matter, and therefore they have the right to have the Court determine that they are citizens.

Now, I don't believe that they meet the test. I think in one instance the allegation is that an application was made in August of 1947 to the American Consul at Canton, China, and that the application was later transferred, at a later date, to Hongkong. Now, it would seem that they are rather old cases. I am not in possession of facts to explain why that delay. In another case an application was made at Hongkong in March of 1952, and they say that the Consulate officer should have acted upon it; in another case, February, 1952; another in July, 1952; and another one in September of 1951.

But I contend this, your Honor, and my motion is based upon Section 903 of the Code, that the Court has no jurisdiction to entertain these suits because there has been no denial by the Consulate officer.

---

\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Banks: If the Court please, I presume your Honor is familiar with Section 903 of the Nationality Act, which states that if any person who claims a right or privilege as a national of the United States is denied such right or privilege by any department or agency or executive officer thereof upon the ground that he is not a national of the United States, such [3] person, regardless of whether he is within the United States or abroad, may institute an action against the head of such department of the United States for the District of Columbia or in the District Court of the United States for the District in which such person claims a permanent residence, for a judgment declaring him to be a national of the United States.

In two of these cases the application was made in Canton or Hongkong in the years 1947 and 1948. The Consul has allowed an unreasonable delay of all this time, and has never acted directly or indirectly on this, which we feel is a direct refusal to issue the certificate of identity to enable the son to come over here to be heard in his trial. They might have long gray beards before the Consul would act over there, and we feel that they have a right to have their cases heard here upon the merits, and if it is proved that they are sons of these citizens they are American citizens. Their rights are being jeopardized because of the Consul's failure to act for, in several of these, a period of four or five years, there has been no word heard from them.

I don't believe Counsel has cited any cases di-

rectly in point. We have some cases that indicate that this dilatory action on the part of the Consul amounts to a denial. If your Honor cares to hear some of those cases—they are not directly in point, but they do indicate that the Consul must take some action within—— [4]

The Court: You agree that the method that has been used in absentia has been that of following the administrative procedure first?

Mr. Banks: Since 1940, since this act, you mean, your Honor?

The Court: No, I mean for 50 years before that.

Mr. Banks: I am not too familiar with how they operated before.

The Court: I am.

Mr. Banks: That is, before the act.

The Court: I am. I don't think that they intended to change that myself. I think that these proceedings are supposed to go through the administrative boards here and then go to the Court of Appeals. That is the normal course, and has been ever since I can remember.

Mr. Banks: I know most of the cases have been in San Francisco and Seattle. There have just been a few here. Since 1940 it seems that the Courts have entertained these cases under this section.

The Court: I never have. I don't know of any binding authority. There is no authority in the Ninth Circuit.

Mr. Banks: Except the wording of this Section 903, whatever interpretation might be placed on it.

The Court: Yes. But that is what I say, I think

the procedure has always been otherwise. I don't think that the act [5] was intended to change the procedure myself.

Mr. Banks: I guess there have been several hundred cases filed under it, and several cases appealed under this section, too. But I don't believe that question has ever come up on them.

The Court: Most of the cases that have been appealed have been the Japanese cases, which is an entirely different situation, as I understand it.

Mr. Banks: I can't answer that. It is according to how the Court's view of this section is.

The Court: As I say, I don't see any reason to reverse the procedure, and I don't think that this was intended to give the Court that right.

Mr. Banks: Of course, I don't want to argue with your Honor. It just says in the section——

The Court: You don't know the history.

Mr. Banks: Possibly not.

The Court: That is what I said. I know the history for 50 years. It has been a different type of procedure. It seems to me that if Congress wanted to change that Congress would have said so.

Mr. Banks: I don't know the history, but I just know this section, and it seems to me that this section would be clear as to what a person's rights would be under that situation.

The Court: You admit there is no denial? [6]

Mr. Banks: No official denial. But they have waited for four and five years. We feel that that is tantamount to a denial.

The Court: I don't see that, either. And at the

present time you have not made any motion to substitute somebody for Acheson?

Mr. Banks: Yes, I did, your Honor. It probably is not in the file, but I did that last week.

The Court: All right. I think that that is a better ground to go on than the other, because, as I understand it, in that you have to indicate that there is a proper ground, and that is why I think I will deny the motions and dismiss the cases on that ground.

Mr. Banks: Dismiss the case on the substitution, you mean?

The Court: Yes, on the ground that substitution cannot be made at present under the statute.

Mr. Banks: I have an associate here that might wish to say something. He has a case.

Mr. Powers: Your Honor, I don't believe that there is anything I could add. Our procedure was under this Section 903, which we contend allows anybody whose rights as an American citizen have been denied by in this case the Consul abroad to bring this action. Our theory in this particular case is that even though there has been no official denial by the Consul, he has refused to act at all, or at least has not acted at all [7] for an unreasonable length of time, and therefore that is tantamount to a denial of the rights of these plaintiffs. And under the section of the Code that is involved here they have a right to bring a case in the District Court where they claim permanent residence, which has been done in this case. It seems to me that if the statute is going to be construed to mean that that denial has to be an official denial, the Consul by

simply refusing to decide any particular case would absolutely make this section of the Code a nullity and no proceeding could ever be brought under it. That is the position in the case which I represent, which is only one of the cases.

The Court: Has your man ever been in the United States?

Mr. Powers: You mean the sons? No, they never have, your Honor.

The Court: How can he claim residence?

Mr. Powers: Through the father, your Honor. His father is a resident here.

The Court: I don't think that this section was ever intended for that sort of a maneuver. I don't think he has any residence here.

Mr. Powers: All we are attempting to do, your Honor, is get a judicial trial so that the Court can determine the question.

The Court: I know, but he has never been here. How can he be a resident? [S]

Mr. Powers: I believe he is entitled to claim a residence in this country. Being a minor it would be through his father.

The Court: Not if he never has been here.

Mr. HARR: There was a recent case, your Honor—perhaps your Honor has read it. I think it was decided in January by Judge Goodman. He comments along the lines your Honor has commented, that in his opinion Section 903 was never intended to cover situations of this kind. He stated that it was his opinion that 903 was intended to cover those cases where people had perhaps expatriated them-

selves by some conduct. And you will note that 903 follows Sections 901 and 902, and 901 and 902 cover such instances as people living abroad who have lost their citizenship. Those were people who had already had citizenship, and this was a procedure set up by Congress to deal with those cases rather than with these foreign-born people.

Mr. Powers: That is all I can say on the subject, your Honor.

The Court: In each of these cases have motions to substitute been filed?

Mr. Banks: Yes, your Honor.

Mr. Powers: I don't believe that is true in my case. No, it has not in my case.

Mr. Harr: I believe just in those cases that Mr. Banks represents have motions been filed.

The Court: In any one of these cases has the person ever [9] been in the United States? In any of your cases?

Mr. Banks: No, your Honor.

Mr. Harr: I notice there is one more case, and I wasn't aware of this when I first addressed the Court. Mr. Maurice Corcoran is attorney in one of the cases here. I thought Mr. Banks represented them all, but I see Mr. Corcoran is the attorney in the Chee case. I don't believe he is in court.

The Court: What is your case? Is that the Ming case?

Mr. Powers: That is the Ming case, 6753, your Honor.

Mr. Harr: I believe Maurice Corcoran is in 6761, Chee.



The Court: In 6751, *Yeau vs. Acheson*, 6757, *Toy vs. Acheson*, and 6762, *Gay vs. Acheson*, the motions to substitute are denied, and in each case the case is dismissed because the statutory requirement of a motion to substitute cannot be performed, it having been stated in the record that the plaintiff has never been a resident of the United States.

In the *Ming* case, there being no motion to substitute, the cause is dismissed for failure to file such a motion to substitute, and likewise it is dismissed upon the ground set out in the motion, it being admitted in this record that *Ming* has never been actually within the limits of the United States.

The *Chee* case is dismissed for failure to prosecute.

(Whereupon proceedings in the above matters on said day were concluded.)

Certified: A true transcript.

/s/ JOHN F. BECKWITH,  
Official Reporter.

[Endorsed]: Filed June 10, 1953. [10]

## CLERK'S CERTIFICATE

United States of America,  
District of Oregon—ss.

I, F. L. Buck, Acting Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Complaint; Answer; Defendant's motion to dismiss; Memorandum opinion; Order dated June 18, 1953; Notice of appeal; Bond on appeal; Designation of contents of record on appeal, and Transcript of docket entries constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 6763, in which Chin Chuck Ming and Chin Chuck Sang, by their next friend and father, Chin Ah Poy, are the plaintiffs and appellants and Dean Acheson, Secretary of State of the United States of America, is the defendant and appellee; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that there is also enclosed a transcript of proceedings, April 20, 1953; and that the cost of filing the notice of appeal is \$5.00 and that the same has been paid by the appellant.

In Testimony Whereof I have hereunto set my

hand and affixed the seal of said court in Portland, in said District, this 6th day of August, 1953.

[Seal]                      F. L. BUCK,  
   Acting Clerk;

By /s/ THORA LUND,  
   Deputy.

---

[Endorsed]: No. 13,963. United States Court of Appeals for the Ninth Circuit. Chin Chuck Ming and Chin Chuck Sang, by Their Next Friend and Father, Chin Ah Poy, Appellants, vs. John Foster Dulles, Secretary of State of the United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed August 8, 1953.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

At a Stated Term, to wit: The October Term, 1952, of the United States Court of Appeals for the Ninth Circuit, held in the Courtroom thereof, in the City and County of San Francisco, in the State of California, on Wednesday, the twenty-ninth day of July, in the year of our Lord one thousand nine hundred and fifty-three.

Present: William Healy, Circuit Judge, Presiding;  
Homer T. Bone, Circuit Judge;  
William E. Orr, Circuit Judge.

No. 13963

CHIN CHUCK MING and CHIN CHUCK SANG,  
by Their Next Friend and Father, CHIN AH  
POY,

Appellants,

vs.

DEAN ACHESON, Secretary of State of the  
United States of America,

Appellee.

**ORDER GRANTING MOTION TO  
SUBSTITUTE PARTY APPELLEE**

Upon consideration of the motion of appellants for an order substituting John Foster Dulles, Secretary of State of the United States of America, as party appellee in place and stead of Dean Acheson, and of the opposition of appellee thereto, and by direction of the Court,

It Is Ordered that the said motion for substitution be, and hereby is granted, and that John Foster

Dulles, Secretary of State of the United States of America, be, and he hereby is, substituted as appellee in the place and stead of Dean Acheson, and that this action be continued in his name as appellee.

---

[Title of Court of Appeals and Cause.]

### STATEMENT OF POINTS

In this appeal, Appellants intend to rely on the following points:

1. That the trial court erred in dismissing the within cause on the ground that the officer of the Department of State has never denied Appellants' application for entry into the United States, in that Appellants' complaint sets forth facts showing that said officer has unfairly, unreasonably and arbitrarily failed to act on their application, and such failure is tantamount to a denial under Section 903, Title 8, U.S.C.A.

2. That the trial court erred in dismissing the within cause on the ground that no motion had been made to substitute the present Secretary of State of the United States of America in place of the one acting at the time the cause was instituted, in accordance with Rule 25(d), Federal Rules of Civil Procedure, in that the six months' period, provided for in said Rules to make said substitution after the retirement from office of the original defendant, had not expired at the time of the dismissal of the action, and that timely substitution was made in the above-entitled court.

3. That the court erred in dismissing said cause on the grounds that Appellants have never resided in the United States of America in that under said Section 903 residence in the United States is not a requirement for bringing said action.

4. That the trial court erred in dismissing said cause on the grounds that said Section 903 did not apply to individuals in the Appellants' situation, having never been in the United States, in that said Section 903 does not limit the right to bring an action thereunder to persons who have lived in the United States of America.

JOSEPH & POWERS,

By /s/ JAMES P. POWERS,

Attorneys for Plaintiffs-  
Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed August 14, 1953.